

Hearing Date and Time: TBD

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	Case No. 09-50026 (REG)
	Chapter 11
GENERAL MOTORS CORPORATION,	
	Honorable Robert E. Gerber
Jointly Administered Debtor(s).	

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**AMENDED OBJECTION TO DEBTOR'S MOTION TO ASSUME AND ASSIGN  
AGREEMENT(S) BETWEEN DEBTOR AND EBERSPAECHER**

Now comes Eberspaecher ("ENA"<sup>1</sup>), and states:

1. ENA objects to the above-captioned motion for the following reasons:
  - a. Debtor has not demonstrated that the agreement(s) between Debtor and ENA are executory and thus subject to assumption and assignment. See e.g. In re Dana Corp., 2007 WL 4105714 (Bankr.S.D.N.Y. 2007) ("A "blanket" purchase order of the type at issue here is not a contract for a specific volume of parts, nor is it a

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<sup>1</sup> This Amended Objection to Docket No. 889 is being filed for purposes of clarification to indicate that the objecting party "Eberspaecher" includes the following group of affiliates: Eberspaecher, North America, Eberspächer catem GmbH & Co. KG, and Espar Products Inc.

"requirements" contract obligating the purchaser to continue to buy parts from the supplier.”).

b. The cure amount is also incorrect. The proper cure amount appears to be no less than \$8,000,000.

WHEREFORE, this Court should deny Debtor’s motion to assume and assign the agreement(s) with Eberspaecher, and grant Eberspaecher such further relief as this Court deems just.

RESPECTFULLY SUBMITTED,

BY: /s/ Robert N. Bassel  
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#### **PROOF OF SERVICE**

On 6/25/2009, I served a copy of the above document upon counsel of record using the ECF system.

BY: /s/ Robert N. Bassel  
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